the quality of his work. There was no indication however that this letter was shown to him and there was no evidence that he was told that he would not be confirmed in his appointment. Fortunately, nothing turned on this at that time since he continued in his work. By letter of March 6, 1971 the respondent advised the appellant that it did not propose to confirm him in his appointment but offered him continuation of employment on a probationary basis until June 6, 1971, i.e. for a further three months. He accepted it as a second chance to prove himself. On June 7, 1971 the appellant received a notice that he would not be confirmed and that he was given one month's notice of termination from July 6.

The only difference between the parties appeared to be the proper assessment of the appellant's work. The appellant endeavoured to challenge the poor opinion of his employer by requesting a test but it was apparent to the employer, as it is to us, that an excellent performance in a test is no sure indication of proper application to one's duty.

Sir Joshua Reynolds in his discourse to the students of the Royal Academy on December 11, 1969, said,

"If you have great talents, industry will improve them; if you have but moderate abilities, industry will supply that deficiency."

He did not deal with the case in which lack of industry was allied to a lack of aptitude. The point in this case was that the appellant had, in the opinion of the respondent, shown neither industry nor talent in his work. On April 22, 1971, for instance, he was given a letter in which he was told that the standard of his work was still unsatisfactory. He had taken a long time over his duties and he had committed numerous careless clerical errors in the books dealt with by him.

The hearing of the High Court was very brief. Only the plaintiff gave evidence and all he complained of was that no notice was given to him at the end of the first probationary period that he was to continue as a probationer. He was briefly cross-examined. He called no other witness and the employer elected not to call any evidence on its part.

The appellant's counsel made two points. First, he said that at the end of the first probationary period the appellant became confirmed in his appointment unless he was told that either he was not confirmed or he would have to undergo a further period of probationary service. Secondly, he said that the dismissal was bad because there had been no enquiry. The learned trial judge in his judgment did not deal with the second point and it is not quite clear from the memorandum of appeal whether the appellant continued to rely on his complaint of breaches of natural justice. In our view, however, there is absolutely no point in this part of the submission. No enquiry needed to be called for in the circumstances of the case. There was evidence which the appellant could not and did not deny that in the course of his brief employment he had been told on several occasions of the unsatisfactory nature of his work, his lack of industry and initiative. His acceptance of a further period of probationary employment must be regarded as an acceptance of the condition that he had to prove his suitability for confirmed service. Unfortunately, his willingness was never translated into action. The appellant knew at all times how dissatisfied his employer was with him and he must have known, having regard to the terms of the letter of appointment, that he was running the risk of dismissal. All he had to do was to produce the work required of him. He never did. The enquiry that he now required would have served no useful purpose.

In so far as his claim of confirmed service was concerned, counsel for the respondent relied on the following passage from the judgment of Das Gupta J., in *Express Newspapers Ltd.* v. *Labour Court & Anor.*[1]:

"This contention is, in our opinion, wholly unsound. There can, in our opinion, be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired — except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer."

With respect, we agree.

For these reasons we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *K. Chandra & Co.; Shearn Delamore & Co.*

MOK DENG CHEE v. YAP SEE HOI & ORS.

[F.C. (Wan Suleiman, Salleh Abas & Abdul Hamid F.JJ.) March 8 & June 28, 1981]

[Johore Bahru — Federal Court Civil Appeal No. 91 of 1980]

Landlord and Tenant — House built on land belonging to another person — Ground rent paid to owner of land — Tenancy coupled with equity — Whether notice to quit valid — Whether tenancy coupled with equity can be determined by bare notice to quit.

In this case the respondents were the owners of a piece of land on which a house had been built by one Hong Kong who was a ground tenant at the ground rent of $1 a month. The house was sold to the appellant's father and after the death of his father the appellant became the owner of the land. He continued to pay the ground rent of $1 which was later raised to $2.50 per month. In 1975 the appellant without the respondent's consent demolished the old house and started to build a completely new house. Differences arose between the parties and a meeting was held to resolve the differences. It was agreed that the appellant should pay tea money of $1,500 and that a written agreement relating to the tenancy be signed. The appellant did not agree to the agreement drawn up by the respondents and the respondents thereupon served a notice to quit to the appellant "to quit and deliver up possession of the premises". The respondents then sued the appellant for possession. The learned Magistrate who heard the case give judgment in favour of the appellant

but on appeal Anuar J. reversed the finding of the learned Magistrate. He held that the notice to quit was a perfectly good notice and rejected the Magistrate's finding that the appellant had a tenancy coupled with an equity. The appellant appealed.

Held: (1) the notice to quit in this case was clear enough and could not be held to be bad in law on account of ambiguity or uncertainty;

(2) in this case it must be presumed that the house had been built with the approval or at least without the objection of the previous owner and the expenditure involved in its construction raised an equity making the tenant a tenant with an equitable estoppel;

(3) the equity was not lost by the changes made to the house nor by the changes in its ownership. The fact that the old house was demolished and that a new one was built without the consent of the respondents, did not in any way affect the equitable estoppel of the appellant;

(4) as the appellant's tenancy was coupled with an equity it could not be determined by a bare notice to quit and therefore there ought to be judgment for the appellant.

Cases referred to:-

(1) *Ramsden* v. *Dyson* (1866) L.R. 1 H.L. 129.

(2) *Plimmer* v. *City of Wellington* (1884) 9 A.C. 699.

(3) *Inwards* v. *Baker* [1965] 1 All E.R. 446, 448.

(4) *M.P.R.L. Karuppan Chetty* v. *Suah Thian* (1916) 1 F.M.S.L.R. 300.

(5) *Devi* v. *Francis* [1969] 2 M.L.J. 169.

(6) *Yong Tong Hong* v. *Siew Soon Wah & Ors.* [1971] 2 M.L.J. 105 F.C.

(7) *Yong Tong Hong* v. *Siew Soon Wah & Ors.* [1973] 1 M.L.J. 133 P.C.

(8) *Tan Swee Ho Company Limited* v. *Ali Hussein Bros.* [1980] 1 M.L.J. 89; [1980] 2 M.L.J. 16.

(9) *Wong Yon Lin* v. *Liew Tham Soon & Ors.* [1980] 2 M.L.J. 99.

(10) *Khew Ah Bah* v. *Hong Ah Mye* [1971] 2 M.L.J. 86.

FEDERAL COURT.

Miss Serene S. Ong for the appellant.

Ng Kong Yeam for the respondent.

Cur. Adv. Vult.

Salleh Abas F.J. (delivering the judgment of the Court): The respondents sued the appellant in Magistrate's Court Johore Bahru for delivery of possession of their land held under agricultural lease No. 271 Lot 2593 situated at Senai Village together with a house erected thereon. The house belongs to the appellant, who was the ground tenant of the respondents. The suit was based on a notice to quit requiring the appellant to deliver up possession of the premises by May 31, 1975 and the notice was served on him on June 11, 1975. The appellant resisted the suit on the ground that the notice was bad in law and therefore had no effect and alternatively he was a tenant who had a tenancy coupled with an equity. The learned Magistrate who heard the case gave judgment in favour of the appellant and on appeal to the High Court Mr. Justice Anuar reversed the ruling of the learned Magistrate. He held that the notice to quit was a perfectly good notice. He also rejected the Magistrate's finding that the appellant had a tenancy coupled with an equity.

The facts of the case are as follows: — The land in question was originally owned by a Malay named Tengku Ngah Syed Mahthar bin Mohammed @ Syed Mahathar bin Mohd. Shahab. It was sold to the respondents on July 20, 1969. The total area of the land was about 6½ acres. On this land there was an old house which was constructed, according to the appellant, long before 1948. The house was built by one Hong Kong who was a ground tenant of the previous owners of the land at a ground rent of $1 per month. In 1951 Hong Kong sold the house to the appellant's father and on the latter's death the appellant became the owner of the house. In respect of this house, the ground rent of $1 per month was continuously paid by the previous house owners as well as the appellant to the land owner. When the respondents purchased the land in 1969 the ground rent was raised to $2.50 per month. Sometime in April 1975 without the respondents' consent the appellant demolished the house and built on the same site a completely new house. When the second respondent saw this he lodged a police report and referred the matter to his solicitors. Subsequently the solicitors wrote a letter to the appellant requiring him to demolish the new house which was then under construction within seven days of the receipt of the letter. As a result of this letter a meeting between the appellant and the respondents was held in order to settle their differences, which arose from the demolition of the old house and rebuilding of a new one without the respondent's consent. At the meeting the respondents asked for a tea money of $4,000 which was eventually reduced to $1,500 whilst the appellant insisted on a written agreement spelling out his tenancy. Thus the meeting ended with an agreement that a tea money of $1,500 was payable to the respondents and that a written agreement relating to the appellant's tenancy was to be signed. The next day the appellant paid the second respondent $500 as part payment of the agreed tea money. A week later the second respondent gave the appellant a written agreement (P7) for signature. The agreement was prepared by a petition-writer. From the evidence it appears that the agreement was drawn up on the instruction of the second respondent. As the agreement was in English the appellant consulted his solicitors and when he found that the agreement did not tally with the terms agreed to with the respondents at the meeting he refused to sign it. Following this refusal the second respondent instructed his solicitors to serve a notice to quit on the appellant requiring him to deliver up the premises at the latest by July 31, 1975. The appellant refused to comply with the notice and hence a civil action was taken against him.

There are only two issues in this appeal. The first is whether the notice to quit dated June 10, 1975 (D7) was bad in law and therefore it had no effect to terminate the appellant's tenancy. The second question upon which the learned Magistrate rested his decision is whether in the circumstances of this case the appellant's tenancy was coupled with an equity which could not be determined by a bare notice to quit.

As to the first point counsel for the appellant submitted that the notice to quit (P7) was inadequate because it was uncertain as to what the appellant should do. For this purpose we reproduce hereunder the material part of the notice:

"We are instructed by our client to give vou notice which

we hereby do, to quit and deliver up possession of the premises known as No. 22, Lorong Empat, Senai, Johore now held by you as ground tenant of our client at a monthly rental of $2.50 per month on or before 31st day of July, 1975 or at the expiration of (1) calender month from the receipt here of whichever is the later date."

It was contended that the phrase "deliver up premises" was ambiguous and uncertain as to what the appellant should do. In our view there is no merit in this submission. As the appellant did not own the land, a notice "to quit and deliver up possession of the premises known as 22, Lorong Empat, Senai, Johore" must mean that the appellant must vacate or give up the land with or without the disputed house being demolished. The term of the notice was clear enough and it should not therefore be held bad in law on account of ambiguity or uncertainty. However, the matter did not end there, because the notice, clear and unambiguous in its terms, may not operate to terminate appellant's tenancy, if the appellant could prove to the satisfaction of the court that he had a tenancy coupled with an equity, or sometimes referred to, equitable estoppel. This leads us to deal with the second issue upon which the learned Magistrate rested his decision but was overruled by the learned judge.

The law on tenancy coupled with an equity or simply an equitable estoppel arose from the speech of Lord Kingsdown in *Ramsden* v. *Dyson,*[1] in which his Lordship referred to the principle as irrevocable licence. This principle was accepted and applied by the Privy Council in *Plimmer* v. *The City of Wellington.*[2] Finally it received its judicial refinement in *Inwards* v. *Baker.*[3] In this case Lord Denning M.R. defined the concept as follows:

"It is quite plain from these authorities that, if the owner of land requests another or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with equity... that the equity arising from the expectation of land does not fail.... The court can look at the circumstances and see whether there is any equity arising out of the expenditure of money."

The principle is also known as equitable estoppel, because the landowner whose conduct has raised an expectation of his tenant of being allowed to stay on and thereby inducing him to spend money in respect of the tenancy is prevented from taking any action contrary to that expectation.

In the development of our law this principle was recognised as long ago as 1916 in the case of *M.P.R.L. Karuppan Chetty* v. *Suah Thian.*[4] It was applied by Chang Min Tat J., as he then was, in *Devi* v. *Francis.*[5] Finally it became a settled law as a result of decision of the Federal Court in *Yong Tong Hong* v. *Siew Soon Wah & Ors.,*[6] which decision was subsequently confirmed by the Privy Council.[7] Its practical application was demonstrated in the decision of Syed Othman J., whose judgment was confirmed by the Federal Court in *Tan Swee Ho Company Limited* v. *Ali Hussein Bros.*[8] and in the decision of Abdoolcader J. in *Wong Yon Lin* v. *Liew Tham Soon & Ors.*[9]

Reverting to the case under appeal we have to examine the circumstances in order to see whether the appellant had acquired a tenancy coupled with an equity. The fact that there was no written agreement between the landowners and the house owners regarding the tenancy is immaterial. Payment of ground rent is a clear indication that the house owners had a tenancy of the portion of the land upon which the house was built. In the courts below a good deal of arguments were advanced as to whether the tenancy was yearly or monthly. For the purpose of equitable estoppel such arguments are of no consequence and completely irrelevant. The house was built by Hong Kong who rented the ground from the previous owner of the land. In the absence of any contrary evidence, we must assume that the house must have been built with encouragement and approval or at least without any objection by the previous landowner. Thus the expenditure involved in its construction raised in favour of Hong Kong an equity making him a tenant with an equitable estoppel. The tenancy together with its equity devolved on to the appellant's father, when Hong Kong sold the house to him, and on his father's death the equity devolved on the appellant as a result of the transmission of the house to him. The house owner continued to enjoy their tenancy undisturbed right up to the time when the respondents became the owners of the land in 1969. The transfer of the land to the respondents made no difference to the tenancy and equity of the appellant. If at all, these were strengthened by the increase of the ground rent to $2.50 per month which the appellant had to pay.

The next question is whether the appellant's equity was in any way affected by the demolition of the old house and rebuilding of a new one without the consent of the respondents. It is clear from the evidence that the new house was built without the approval of the respondents. However, in our judgment lack of such consent did not affect the appellant's equity. The house which he built was not meant for other purpose than his own habitation so that he and his family could live in it much more comfortably than they did in the old house. There was no change of purpose, and moreover the new house was not built on any other site than that of the old house. The fact that only the land was rented and the fact that the previous tenant was allowed to have the old house built on it for the purpose of habitation clearly show that the very purpose of the tenancy was to provide a house for the tenant. Thus it makes no difference to the tenant's equity, whether the house is old or new. The equity is not lost by the changes made to the house nor by the changes in its ownership.

The arguments of respondents that the house being new, they were no longer precluded from recovering possession of their land was, in our judgment a complete misconception of the legal effect of the appellant's equity vis-a-vis the Control of Rent Act 1966. The Act *inter alia* protects a tenant who rents a house from his landlord, where the house was built before January 31, 1948. It has nothing to do with the case of a tenant who rents only the land but owns the house i.e. the Act does not apply where the landlord does not own the house. Thus paragraph 4 of the respondent's statements of claim is completely misconceived. Our view of the case under appeal is similar to the judgment of Choor Singh J. in *Khew*

Ah Bah v. *Hong Ah Mye*[10] in which the learned judge came to the conclusion that the tenant's equity was not defeated by a bare notice to quit despite the fact that the house had become a completely "new building" within the meaning of the Control of Rent Ordinance of Singapore because of the continuous repairs done to it.

Similarly in this case the fact that the old house was demolished and that a new one was built, even without consent of the respondents, did not in any way affect the equitable estoppel of the appellant. If at all, such equity was further strengthened by the increase in the ground rent and the agreement as to tea-money, towards which $500 was paid by appellant. The failure on the part of the appellant to sign a written agreement (P9) was, in our view, fully justified because of the material differences between it and the verbal agreement reached earlier. The appellant acted properly in taking the agreement to see his solicitor and in subsequently refusing to sign it when he was advised that its terms differed from what he had earlier on agreed with the respondents. In the circumstances there ought to be a judgment for the appellant.

The appeal is therefore allowed with costs.

Appeal allowed.

Solicitors: *L.M. Ong & Co.; Hassan & Kong Yeam.*

ROSLAN BIN ABDULLAH v. NEW ZEALAND INSURANCE CO. LTD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Tan Chiaw Thong J.) May 11 & July 16, 1981]

[Kuching — Federal Court Civil Appeal No. 202 of 1980]

Insurance — Motor vehicle — Vehicle insured in the name of former owners of vehicle — Vehicle transferred to new owner — Policy lapsed — Sarawak Motor Vehicles (Third Party Risks) Ordinance (Cap. 130), s. 9(1).

Practice and Procedure — Statement of claim — Whether disclosing no reasonable cause of action, frivolous or vexatious — Application to strike off — R.H.C. 1980, O. 18 r. 19.

In this case the appellant was injured in a collision between a truck and another truck belonging to the United Malaysia Co. Ltd. and driven by one Lee Nyong Kong. The appellant had obtained judgment against the United Malaysia Co. Ltd. and Lee Nyong Kong. He brought an action against the respondents, who were the insurers of the truck. The truck had been insured in the name of the previous owners of the truck. The respondents contended that they were not liable as no judgment had been entered against the party insured. They applied for the statement of claim to be struck out under Order 18 rule 19 of the Rules of the High Court, 1980 on the grounds that it disclosed no reasonable cause of action, was frivolous, vexatious and an abuse of the processes of the court. The learned Judicial Commissioner allowed the application and the appellant appealed.

Held: (1) in this case, once ownership of the truck changed the insurance policy lapsed unless there was novation of the policy, which was not alleged. The driver of the truck was not covered by the insurance policy as there was no insurance policy at the time of the accident;

(2) the claim of the appellant was obviously unsustainable and therefore the summary procedure under Order 18 rule 19 of the Rules of the High Court, 1980, was applicable.

Cases referred to:-

(1) *Peters* v. *General Accident & Life Assurance Corpn. Ltd.* [1937] 4 All E.R. 628.

(2) *Watkins* v. *O' Shaughnessy* [1939] 1 All E.R. 385.

(3) *A.G. of Duchy of Lancaster* v. *L. & N.W. Rly Co.* (1892) 3 Ch. 274.

The following cases were also referred to in argument: *Letchumi* v. *Asia Insurance Co. Ltd.* [1972] 2 M.L.J. 105; *Ahmad Sandara Lela Putera & Another* v. *Queensland Insurance Co. Ltd.* [1975] 1 M.L.J. 269; *Manap bin Mat* v. *General Accident Fire & Life Assurance* [1971] 1 M.L.J. 134; *Tattersall* v. *Drysdale* [1935] All E.R. 112; *Abu Bakar bin Haji Yusuf* v. *Mohamed Hamzah b. Hanapiah & Anor.* [1978] 2 M.L.J. 78.

FEDERAL COURT.

Bong Ban Chong for the appellant.

Chew Pok Oi for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivered by Lee Hun Hoe C.J. (Borneo)): The appellant, according to his statement of claim, was travelling as an attendant in a truck bearing registration No. KC 6007 which was in collision with another truck belonging to the United Malaysia Co. Ltd. driven by one Lee Nyong Kong, No. KA 343. In Civil Suit No. K.124 of 1976, judgment was entered in his favour against both the United Malaysia Co. Ltd., and Lee Nyong Kong.

For reasons best known to appellant, probably inability to pay on the part of the two aforementioned, he then filed this suit against the respondent company, alleging that by a policy of insurance issued by respondents to a Messrs. Wee & Wee Realty Sdn. Bhd., the respondents had agreed to indemnify any person driving on the insured's order or with their permission against any liability incurred by that person in respect of any loss or expense caused by or arising out of the use on a road of truck KA 343, and that Lee Nyong Kong was driving on the orders and/or with the permission of Messrs. Wee & Wee Realty Sdn. Bhd. at the time of the collision.

The respondents in their defence contended, *inter alia*, that since no judgment was entered against the party insured, i.e. Messrs. Wee & Wee they were not liable to pay appellant under Clause 9(1) of the Motor Vehicles (Third Party Risks) Ordinance (Cap. 130).

Respondents then filed a summons in chambers praying that the statement of claim be struck out under Order 18 rule 19 of the Rules of the High Court 1980 on the grounds that it disclosed no reasonable cause of action, was frivolous, vexatious and an abuse of the process of the court.

The appellant relied on section 9(1) of the Motor Vehicles (Third Party Risks) Ordinance (Cap. 130) for recovery of the judgment he had obtained in C.S. No. K.124 of 1976 from the respondents.

Section 9(1) reads:

"If, after a certificate of insurance has been issued under subsection (4) of section 4 to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to